



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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SENT VIA REGULAR MAIL

Barry W. Welch, Acting Regional Director
Western Regional Office
Bureau of Indian Affairs
U.S. Department of the Interior
P.O. Box 10
Phoenix, AZ 85001

Re: Response to BIA Letter Concerning Hecla Mining
Company's Final Closure Work Plan for
Apex Site Pond 2, St. George, Utah

Dear Mr. Welch:

This letter is in response to your letter of June 10, 2004, regarding the proposed final closure work plan prepared by Hecla Mining Company (Hecla) for the Apex Site Pond 2 (Pond 2), located in St. George, Utah.

Contrary to the assertions in your letter, the United States Environmental Protection Agency Region 8 (EPA) has fulfilled its tribal consultation obligation and regularly communicated with the Bureau of Indian Affairs (BIA) in this matter. EPA also has been diligent in addressing any past, present, and potential environmental or public health threats posed by Pond 2. EPA's approval of the final draft closure work plan is based on a five-year comprehensive investigation and analysis of Pond 2, review and comment on the initial draft closure work plan, and tribal consultation to the greatest extent practicable. Because it is imperative that the consolidation and drainage phase of closure be performed during the summer months, EPA cannot extend its comment deadline of June 11, 2004. While EPA regrets that BIA did not take a more active role in this matter over the course of EPA's investigation, EPA is proceeding with its approval of the closure work to ensure that Pond 2 is closed in an environmentally-protective manner. BIA remains welcome to provide closure plan comments directly to Hecla following an independent review.

EPA takes its trust and tribal consultation responsibilities seriously. EPA has coordinated consistently with the Paiute Tribe and the Shivwits Band of Paiute Indian Tribe (Shivwits Band) throughout its investigation of Pond 2 and prior to approving the draft final closure work plan. As documented by an extensive correspondence chronology, the Shivwits Band Chairman and the Environmental Director for the Paiute Tribe have been copied on all non-settlement related correspondence and reports generated in this matter from October 1998 to date. (See attached)

Hecla provided the Shivwits Band and the Paiute Tribe with the draft initial closure work plan dated August 17, 2003. Tribal representatives provided Hecla and EPA oral comments on this draft document during a site tour on September 17, 2003. Hecla subsequently incorporated these and EPA comments into the draft final closure work plan, prepared by Hecla on March 25, 2004. Hecla mailed copies of the draft final closure work plan to the Shivwits Band and the Paiute Tribe, in addition to EPA and BIA, on April 2, 2004. Absent any response to the draft final document by the Paiute Tribe, the Shivwits Band or BIA, EPA mailed a follow-up letter and second copy of the draft final closure work plan on May 28, 2004, requesting comments and/or concurrence by June 11, 2004.

EPA similarly has copied personnel from both BIA's Phoenix office and the Southern Paiute Field Station on Pond 2-related correspondence and documents throughout the period of EPA's site investigation. Although EPA has since learned that BIA was inadvertently dropped from the initial closure plan distribution list in August 2003, EPA's correspondence chronology shows that BIA has been copied on all other non-settlement confidential communications in this matter, including the draft final closure work plan prepared March 25, 2004.

The proposed closure work plan prepared by Hecla is based on more than five years of comprehensive investigation and analysis of Pond 2. Extensive sampling has been conducted on the wastepile, surrounding soils, and underlying groundwater. Pursuant to an EPA order issued to Hecla under section 3013 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6934, on September 22, 1999, Hecla submitted a soil sampling and analysis work plan ultimately approved by EPA on September 21, 2001. A full investigation and soils sampling analysis of Pond 2 was performed by Hecla in October 2001, pursuant to the work plan and following critical deliberation of any potential impacts to groundwater. The results of the October 2001 investigation and sampling analysis conclusively determined that there was no groundwater seepage migration from Pond 2. These results were provided to the Paiute Tribe, the Shivwits Band and BIA in a memorandum from Hecla Project Manager Chris Gypton to EPA Region 8 Hydrologist Randall Breedon, with attachments, dated December 3, 2001.

Based, in part, on the site study of Pond 2 referenced above and the incorporation of EPA and tribal comments to the initial draft closure work plan, EPA is satisfied with the scope and content of the final draft closure work plan and the construction activities set forth therein. EPA does not believe that further soil sampling or ground water monitoring at the site is necessary or prudent. Because Pond 2 is not a hazardous waste landfill, it is not subject to the requirements of 40 C.F.R. part 265, including the 30-year monitoring or financial assurance requirements recommended by BIA. Similarly, no basis exists for treating Pond 2 as a solid waste landfill subject to the requirements of 40 C.F.R. part 258. Establishing a 30-year groundwater monitoring and facility maintenance program consistent with solid waste landfill closure requirements is not appropriate. EPA recently provided John Krause of BIA with pre-decisional information in this matter to assist in understanding the level of analysis and deliberation invested in preparing the draft closure work plan. These materials, in addition to a review of BIA's existing Pond 2 file, should provide BIA with sufficient assurance that the closure work plan is protective of human health and the environment.

While EPA supports BIA's interest in participating in the closure process, EPA cannot justify postponing its approval of the closure plan and commencement of initial closure construction activities. EPA established the deadline of June 11, 2004, to ensure that the first phase of closure construction activities, consolidation and drainage, could commence this summer. It is imperative that the consolidation and drainage activity be performed during dry, warm weather months. A delay in approving the closure plan would result in the postponement of this activity for a full year, during which time the wastepile would continue to pose an unacceptable threat to human health and the environment. Hecla currently has a contractor prepared to begin Phase 1 on or about July 15, 2004.

BIA may conduct an independent review of the final closure work plan and communicate any resulting comments or concerns directly to Hecla. Hecla has stated that it is willing to reasonably consider any post-deadline comments submitted by BIA separate and apart from EPA's closure work plan approval. This enables Hecla to begin closure activities with EPA approval and with BIA participation. As the BIA scope of work for retaining a consultant to review the closure plan remains with the BIA contracting office, BIA can then conduct its review in a non-expedited manner.

In the event that you have further questions regarding this matter, the persons on my staff most knowledgeable on this issue are Eric Johnson, Environmental Scientist, telephone number (303) 312-6357, and Amy Swanson, Enforcement Attorney, available at (303) 312-6906. As always, EPA is committed to coordinating effectively with BIA on issues impacting public health and the environment in Indian country.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

cc: Glenn Rogers, Shivwits Band of Paiute
Lora Tom, Paiute Indian Tribe
Tara Marlowe, Paiute Indian Tribe
Tod Smith, Whiteing & Smith
John Krause, BIA Western Regional Office
Cathy Wilson, BIA Western Regional Office
Carolyn Bowker, BIA Western Regional Office
Kelly Gallegos, BIA Southern Paiute Field Station
Debbie McBride, BIA Office of Environmental, Safety & Cultural Resources
Management

EPA Correspondence Chronology¹
Regarding EPA Investigation of Hecla Mining Company-Apex Site Pond 2

- 1998/10/30 EPA letter to Chairman Glenn Rogers, Shivwits Band, notifying Shivwits Band of upcoming RCRA and NPDES inspection on the Paiute Indian Reservation. Copied: Charlotte Domingo, Paiute Tribe; Flossie Girty, BIA; Pat Brewer, BIA; Effie Delmar, BIA.
- 1999/3/8 EPA letter to Chairman Glenn Rogers, Shivwits Band, providing update on the RCRA and NPDES Program inspection conducted on Shivwits Band of the Paiute Reservation. Copied: Charlotte Domingo, Paiute Tribe; Flossie Girty, BIA; Pat Brewer, BIA; Effie Delmar, BIA.
- 1999/6/1 EPA letter to David Suhr, Hecla, requesting certification of prior submittal of information requested after an inspection of a wastesite. Copied: Glenn Rogers, Shivwits Band; Charlotte Domingo, Paiute Tribe; Sue Groves, EPA; Effie Delmar, BIA; Flossie Girty, BIA; Pat Brewer, BIA.
- 1999/9/10 EPA letter to Chairman Glenn Rogers, Shivwits Band, providing notice of proposed enforcement action involving Hecla Mining Company for alleged RCRA violations at the Apex Site Pond 2.
- 1999/9/22 EPA letter to David Suhr, Hecla, issuing Order Requiring Monitoring, Testing, Analysis, and Reporting issued pursuant to section 3013 of RCRA. Copied: Glenn Rogers, Shivwits Band; Betsy China, Paiute Tribe; John Krause, BIA; Effie Delmar, BIA; Janet Wong, U.S. DOI Office of the Solicitor; Tina Artemis, Regional Hearing Clerk
- 1999/10/28 EPA letter to John Galbavy, Hecla, regarding RCRA section 3013 order informal conference call and stay of work plan submittal deadline. Copied: Betsy China, Paiute Tribe; John Krause, BIA; Effie Delmar, BIA; Janet Wong, US DOI Office of the Solicitor; Tina Artemis, Regional Hearing Clerk
- 2000/2/16 EPA letter to Effie Delmar, BIA, requesting comments on the work plans for characterization submitted per EPA's order requiring monitoring, testing, analysis, and reporting for the Hecla pond.

¹ This chronology does not contain any enforcement sensitive documents or settlement communications with Hecla Mining Company subject to FRE 408

2000/2/16 EPA letter to John Krause, BIA, requesting comments on the work plans for characterization submitted per EPA's order requiring monitoring, testing, analysis, and reporting for the Hecla pond

2000/2/16 EPA letter to Betsy China, Paiute Tribe, requesting comments on the work plans for characterization submitted per EPA's order requiring monitoring, testing, analysis, and reporting for the Hecla pond

2000/2/25 EPA letter to Chairman Glenn Rogers, requesting comments on work plans for characterization submitted per EPA's order requiring monitoring, testing, analysis and reporting for the Hecla pond. Also sent work plans to Betsy China, Paiute Tribe

2000/8/2 EPA letter to David Suhr, Hecla, providing comments on the soil sampling and analysis work plan and the leachate and runoff work plan. Includes comments of BIA in its capacity as trustee for tribal lands. Requests modified work plan be submitted to Glenn Rogers, John Krause, and Effie Delmar. Copied: Glenn Rogers, Shivwits Band; Effie Delmar, BIA; John Krause, BIA

2000/8/17 EPA letter providing attachment to comments on soil sampling and analysis work plan and runoff sampling and analysis work plan previously submitted on August 2, 2000. Copied: Chairman Glenn Rogers, Shivwits Band; Effie Delmar, BIA; John Krause, BIA.

2000/8/31 Hecla Mining Company's Designation of Project Coordinator pursuant to RCRA section 3013 Order. Copied: Chairman Glenn Rogers, Shivwits Band; John Krause, BIA; Deborah Hamlin, BIA

2000/9/18 Hecla Mining Company response to EPA's comments on soil sampling and analysis work plan and leachate and runoff sampling and analysis work plan. Copied: Betsy China, Paiute Tribe; John Krause, BIA; Effie Delmar, BIA.

2000/11/3 EPA list of major concerns with Hecla's revised work plans.

2000/11/13 Hecla's responses to EPA's concerns. Copied: Betsy China, Paiute Tribe; John Krause, BIA; Effie Delmar, BIA

2001/1/25 EPA letter to Hecla attorney forwarding letter from Chairman Glenn Rogers, Shivwits Band, to Bill Yellowtail, EPA, expressing concerns about the environmental impacts from OMG operations and, to a minor extent, Hecla Pond 2, dated 12/4/2000.

- 2001/6/13 EPA letter to Chairman Glenn Rogers, Shivwits Band, providing EPA's revised scope of work plans submitted per EPA's RCRA 3013 Order for Pond 2. Copied: Joe Souther, HKM Engineering, on behalf of Shivwits Band.
- 2001/7/13 EPA letter to Chairman Glenn Rogers, Shivwits Band, forwarding revised scope of work plans submitted per EPA's order requiring monitoring, testing, analysis, and reporting for the Hecla pond. Copied: Joe Souther, HKM, on behalf of the Tribes.
- 2001/7/16 EPA letter to John Krause, BIA, requesting for comments on soil sampling and analysis work plan submitted per EPA's order requiring monitoring, testing, analysis, and reporting for the Hecla pond.
- 2001/7/16 EPA letter to Chairman Glenn Rogers, Shivwits Band, requesting for comments on soil sampling and analysis work plan submitted per EPA's order requiring monitoring, testing, analysis, and reporting for the Hecla pond.
- 2001/7/16 EPA letter to Effie Delmar, BIA- request for comments on soil sampling and analysis work plan submitted per EPA's order requiring monitoring, testing, analysis, and reporting for the Hecla pond.
- 2001/7/16 EPA letter to Joe Souther, HKM, on behalf of Shivwits Band, requesting comments on soil sampling and analysis work plan submitted per EPA's order requiring monitoring, testing, analysis, and reporting for the Hecla pond.
- 2001/9/24 EPA letter to Chris Gypton, Hecla approving revised soil sampling and analysis work plan.
- 2001/10/ Hecla investigation and soils sampling and analysis at Pond 2. In attendance was Gerald Kanosh, Shivwits Band.
- 2001/10/31 EPA phone call to Eve Woods, Attorney for Shivwits Band, providing update following October 2001 investigation and soils sampling and analysis at Pond 2.
- 2002/1/16 EPA letter to Chairman Glenn Rogers, Shivwits Band, forwarding results of October 2001 Apex Site Pond 2 investigation and soils sampling and analysis. Copied: Tod Smith, Attorney for Shivwits Band; John Krause, BIA; Effie Delmar, BIA.
- 2002/8/2 EPA letter to Chairman Glenn Rogers, Shivwits Band, providing advance notice of inspection scheduled for 9/18/2002 and stating that a copy of the final inspection report will be sent to Chairman Rogers.

2002/9/18 EPA RCRA compliance evaluation inspection of Pond 2. No BIA or tribal representatives in attendance despite advance inspection notice provided on 8/2/2002.

2003/8/21 EPA letter to Chairman Glenn Rogers, Shivwits Band, providing advance notice of inspection scheduled for 9/24/2003.

2003/9/3 EPA fax to Tara Marlowe, Paiute Tribe, regarding the 9/23-24 inspections and letter sent to Hecla attorney dated 8/28/03.

2003/9/23 Hecla letter and initial draft closure plan provided to Chairman Glenn Rogers, Shivwits Band and Tara Marlowe, Paiute Tribe, requesting comments.

2003/9/24 EPA RCRA compliance evaluation inspection of Pond 2. In attendance were Tara Marlowe, Paiute Tribe, Freddy Bigfeet, Shivwits Band; Lawrence Snow; Shivwits Band; Delyce Thom, Paiute Tribe; Gerald Kanosh, Shivwits Band.

2003/10/27 EPA letter to Chairman Glenn Rogers, Shivwits Band, providing copy of the final inspection report based on the 9/24/2003 inspection.

2004/2/2 EPA phone call to Tara Marlowe, Paiute Tribe, to verify receipt and review of final draft closure plan.

2004/4/2 Hecla letter to Chairman Glenn Rogers, Shivwits Band, forwarding copy of final draft closure plan. Copied: Tara Marlowe, Paiute Tribe; John Krause, BIA.

2004/4/13 Fax from Amy Swanson, EPA, to John Krause, BIA, forwarding e-mail request to Hecla to copy BIA on final draft closure work plan if not already done so. (As noted above, plan was sent to BIA on 4/2/2004)

2004/5/28 EPA letter to Chairman Glenn Rogers, Shivwits Band, requesting concurrence/comment on the final draft closure work plan by June 11, 2004, and informing the Shivwits Band of the proposed settlement agreement with Hecla. Copied: Tara Marlowe, Paiute Tribe; Tod Smith, Attorney for Shivwits Band; John Krause, BIA.

2004/6/10 BIA letter to Eric Johnson, EPA, expressing concerns regarding draft closure work plan process and consultation with BIA and the Tribes. Copied: Chairman Glenn Rogers, Shivwits Band; Chairwoman Lora Tom, Paiute Tribe; Kelly Gallegos, BIA; Cathy Wilson, BIA; Carolyn Bowker, BIA; Debbie McBride, BIA; Bill Quinn, DOI Solicitor's Office.

- 2004/6/21 EPA phone call to Tara Marlowe, Paiute Tribe, regarding Tribe's review of and any comments on final draft closure plan absent any response to previous inquiry. Plan had not yet been reviewed by Paiute Tribe but informed by Ms. Marlowe that EPA would be contacted as soon as possible if the Tribe had comments following review. No comments received by EPA.
- 2004/6/24 EPA letter to John Krause, BIA, providing additional documentation in support of draft closure plan and demonstrating prior consideration of groundwater.
- 2004/6/28 E-mail from Amy Swanson, EPA, to John Krause, BIA, noticing John Krause that he will be provided pre-decisional documentation relating to groundwater in further support of groundwater consideration prior to developing the draft closure work plan.
- 2004/6/28 EPA letter to John Krause, BIA, forwarding the pre-decisional documentation relating to groundwater, previously described in the above-referenced e-mail.
- 2004/7/7 EPA letter to Chris Grypton, Hecla, providing EPA approval of final closure work plan. Copied: Glenn Rogers, Shivwits Band; Tara Marlow, Paiute Tribe; Tod Smith, Attorney for Shivwits Band; John Krause, BIA